APPEAL NO. 010310

Following a contested case hearing held on January 25, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the sole disputed issue by finding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) contends that the hearing officer's determination is against the great weight of the evidence and should be reversed. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The statutory and administrative rule requirements for SIBs are found in Section 408.142 and 408.143, and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the qualifying period for the fifth SIBs quarter was from July 23 to October 21, 2000, and that the claimant did not look for employment during the qualifying period. We note that the hearing officer states that the parties stipulated that the impairment rating is 15%. The record reflects that the stipulation was to 17% and Finding of Fact No. 1b is reformed accordingly.

Rule 130.102(d)(4) provides that:

> An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The hearing officer did not err in concluding that the claimant was entitled to SIBs for the fifth compensable quarter. The November 7, 2000, report of Dr. W, the claimant's treating doctor, describes the claimant's injury, his failed lumbar spine surgery, and how his severe back pain and rigidity and his medicines adversely affect him physically and mentally. Dr. W's letter, while dated shortly after the close of the qualifying period, satisfies the requirement of Rule 130.102(d)(4) for a narrative report and, as the hearing officer found, no other record showed that the claimant was able to return to work. That Dr. W's letter was written after the qualifying period closed goes to the weight the hearing officer may choose to give it. Further, Dr. M, an orthopedic surgeon, reported on August 31, 2000, that the claimant's spinal fusion was done using coral and not bone and that he feels the fusion is not solid. He indicates that the claimant needs a re-fusion to relieve his pain.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and

inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This tribunal will not upset the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge